IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.720 OF 1991.

Tukaram Govind Patil
and Manjabai Tukaram Patil,
deceased by their legal heirs

1. Ramchandra Tukaram Patil
   r/o. Mhalunge,
   Tal : Kalvir.

2. Sou. Savitri Ganpati Pawar
   r/o.Walva,
   Tal : Radhanagari

3. Sou. Chingubai Shamrao Patil
   r/o. Tarawade,
   Tal : Radhanagari

4. Ranguti Tukaram Patil
   @ Anandi Bandu Hindole
   r/o. Kadalgaon,
   Tal : Karvir,
   Dist : Kolhapur .. Appellants
   (Original Plaintiffs)

versus

Hindurao Lahu Kamble
r/o. Mhalunge,
Tal : Karvir,
Dist : Kolhapur .. Respondent.
(Original Defendant)

Ms. Asha Bhamhani, i/b. A.K.Abhyankar, Advocate for the Appellants.

Mr.V.B.Rajure, Advocate for the Respondent.

CORAM : S.R.SATHE, J.

DATED : 2nd September, 2004.

JUDGMENT :

1. Being aggrieved by the judgment and order passed by the Court of 3rd Additional District Judge, Kolhapur, in Civil Appeal No. 435 of 1986, whereby the order passed by Joint Civil Judge, J.D. Kolhapur in Regular Civil Suit No. 294 of 1979, dismissing the plaintiff's suit was confirmed and the appeal was dismissed, the original plaintiff has preferred this second appeal. (For the sake of convenience hereafter the parties shall be referred to as plaintiffs and defendant)

2. Brief facts giving rise to this appeal are as under :

. The Agricultural land bearing original survey no.132 of Gut No.552 admeasuring 4 acres 21 gunthas was initially owned by Shahaji Chatrapati Charitable Trust. The plaintiff was the tenant in the said land. As the defendant was having good

relations with plaintiff he requested the plaintiff to give the said land for cultivation. Accordingly, the plaintiff gave the said land to the defendant and the defendant agreed to pay Rs.57/- per year. However the defendant did not pay the agreed amount. The plaintiff therefore decided not to continue the defendant in cultivation of the suit land. Hence the plaintiff issued notice dated 28.11.1978 to the defendant and called upon him to hand over the possession. The defendant however, did not accept the notice, on the contrary managed to have the endorsement as ‘left’. The plaintiff therefore again issued second notice dated 26.12.1978. It was received by the defendant but he did not reply to the notice nor did he hand over the possession. Hence the plaintiff filed the present suit for possession and mense profit. The defendant filed his written statement at exhibit 10 and resisted the suit claim. He contended that the plaintiff is not the owner of the suit land, nor at any time the land has been given to him by the plaintiff. According to the defendant the land was owned by Shahaji Chatrapati Charitable Trust and he

received the said land from the trust as tenant since the time of his father. According to him, he was in possession of the said land for the period of about 40 years. It is his contention tht as it was not possible for him and other tenants in the land to deposit the rent with the trust, he used to hand over the same to the plaintiff for depositing it with the trust. However, subsequently it was noticed that the plaintiff failed to deposit the rent handed over to him by the defendant. The defendant, therefore, started sending the rent to the trust by Money Order. The defendant also contended that the suit filed by the Plaintiff in the Civil Court for possession is not maintainable. Hence on all these grounds the defendant prayed for dismissal of the suit.

3. On these pleadings the trial court framed issues which are at exhibit 14. After considering the evidence adduced by both the parties the trial court came to the conclusion that the plaintiff has failed to prove that the suit land was given by defendant to plaintiff as tenant. It was

therefore held that the plaintiff was not entitled for possession and suit was dismissed. On these pleadings the learned trial court framed issue as to whether the defendant is tenant and the said issue was to be referred to the tenancy authority. However the plaintiff submitted an application and on the basis of the said application the said issue was decided by the trial court.

4. The original plaintiff challenged the above mentioned order in the District Court, Kolhapur. The 3rd Additional District Court, after hearing the argumentsw came to the conclusion that the Civil Court had no jurisdiction to try the present suit. The appellate court also held that plaintiff has failed to prove that defendant was inducted in the suit premises through him as tenant. Naturally, the appeal was dismissed.

5. Being aggrieved by the above order, the original plaintiffs have filed this second appeal. From the perusal of the record, it appears that when the appeal was admitted on 20.1.1992 this

court passed the following order : "The substantial question of law is set out at point 1(one). Appeal admitted."

The said point is reproduced as under :

> (1) Whether the suit filed by the plaintiffs for posession is not maintainable in the Civil Court in view f the provisions of Section 888 of the Bombay Tenancy and Agricultural Lands Act?

6. In this appeal before me the learned Advocate for the original plaintiff has urged two points. Firstly, he submitted that the finding recorded by the first appellate court to the effect that the Civil Court has no jurisdiction is not legal and correct. As per the provisions of 88(b) Bombay Tenancy & Agricultural Lands Act necessary certificate was issued in respect of the suit land and as such the Civil Court had jurisdiction to try the suit. Secondly, she canvassed before me that there was sufficient record to indicate that the land in question was

leased out by the trust to the plaintiff and then the plaintiff leased the land to defendant and as such the plaintiff was entitled to seek possession by filing a suit in Civil Court. As against this, Shri Rajore, the learned Advocate for the defendant supported the judgment and order passed by the first appellate court.

7. From the perusal of the judgment of the first appellate court, it is very clear that the first appellate court has held that in the instant case the plaintiff has failed to bring on record the nature of trust and as a result of the same it is infact not possible to determine whether the provisions of section 88B can be made applicable to the present case. It would be worthwhile to see what section 88B of the Bombay Tenancy & Agricultural Lands Act, 1948 (hereafter referred to as B.T.A.L.Act) says. It reads as under :

> **88B.**(1) Nothing in the foregoing provisions except sections 3, 4B, 8,, 9, 9A, 9B, 9C, 10, 10A, 11, 13 and 27 and the provisions of said Chapters are applicable to any of the matters referred to in the sections mentioned above shall apply-

> (a).....
>
> (b) to lands which are the property of a trust for an educational purpose (a hospital, Panjarapole, Gaushala or an institution for public religious worship: Provided that -
>
> (i) such trust is deemed to be registered under the Bombay Public Trusts Act, 1950, and
>
> (ii) the entire income of such lands is appropriated for the purposes of such trust;
>
> (c).....
>
> (d).....
>
> (2) For the purpose of this section , a certificate granted by the Collector, after holding an inquiry, that the conditions in the proviso to the sub-section (1) are satisfed by any trust shall be conclusive evidence in that behalf.

It is true that in the instant case the plaintiff has not brought on record the aims and object of the trust in question and as such the first appellate court held that the plaintiff has failed to show that the land in question is owned by the trust to whom certificate under Section 88B can be granted. Infact, from the perusal of the record it appears that at exhibit 74(a) the plaintiffs have produced certified copy of the order passed

by the Additional Tahsildar in proceeding no.327 dated 3.7.1971. From the perusal of the said order it is very clear that certificate under Section 88B is infact granted to the trust in question vide order passed by the District Deputy Collector, Division Kolhapur vide order no.TNC/2-547/69 dated 26.12.1960. So, having regard to the provisions of section 88B(2) it is very clear that this certificate is conclusive proof to show that in view of the provisions of section 88B, particular provisions of the BTAL Act as mentioned in section 88B are not applicable to the instant suit. So, relying on this certificate it was argued on behalf of the plaintiff that the Civil Court had jurisdiction to try the present suit. Shri Rajure, however, argued before me that in the instant case the suit is not filed by the trust but it is infact filed by the person who is posing himself as a tenant of the trust and as such the provisions of section 88B are not applicable. In other words, according to him the benefit of section 88B can be availed only by the trust and not by any other person. However, if we peruse Section 88B there is nothing in this

section which remotely indicates that the said provision would be applicable only when the relief under said section is claimed by the trust. The lerned Advocate for the plaintiff submitted that once the certificate under section 88B is granted it is granted to the land in question and it is not necessary that only trust can avail relief under the said section. For this proposition she has placed reliance on the case, Poulad Deochand vs. S.A.N.P.Trust 1992 Mh.L.J. 4127. From the perusal of this ruling it appears that this court has observed that the statute provides that if the prescribed conditions are objectively satisfied by the trust, the land in question shall be treated as exempted from prescribed provisions of the Act notwithstanding the fact that the holder of the land may not possess the certificate of exemption. In the instant case the trust is infact holding the certificate under section 88B of the BTAL Act and it appears that exemption is granted to the land in question and it is not that the said exemption is granted to the trust. Infact, the exemption is granted to the land which is held by the trust. Once such exemption is granted then

the provisions of section 88B are attracted and even a stranger can take aid of this provision. So I think that there is no substance in the argument advanced by the learned Advocate for the defendant that the benefit of section 88B can be availed only by the trust and not by a stranger. In this view of the matter, I have no hesitation to hold that the finding recorded by the first appellate court that the Civil Court had no jurisdiction is not legal and correct and the Civil Court had jurisdiction.

8. Merely because the Civil Court had jurisdiction to try the present suit it can not be said that the present appeal is to be allowed. Ultimately, it is necessary to see whether the plaintiff has proved that the land in question was leased out or sub-leased by the plaintiff to the defendant. In this respect both the courts below after considering the entire material on record have held that the plaintiffs have failed to prove that the suit land was leased out by plaintiff to defendant. On the contrary a concurrent finding has been recorded whereby it has been observed

that the land in question was leased out by the trust and as such the plaintiff is not entitled to get the possession. Under the circumstances, there is no necessity to interfere with the said finding of fact. Besides this it must also be noted that even if we peruse the material on record it appears that the defendants have produced at Exhibit 53 to 57, various 7x12 extracts of the suit land, from the perusal of which it is clear that right from 1975 to 1984 the present defendant is shown as tenant. The plaintiff has not adduced any independent evidence to show that the suit land was subleased by plaintiff to present defendant. It was also tried to be argued that plaintiff had adduced evidence to show that prior to 1955 at one point of time the plaintiff was shown as tenant in respect of the entire land admeasuring 4 Acres and 28 gunthas and as such it should be held that the land in question was sub-leased by plaintiff to defendant. It was also submitted that so far as the rent receipts are concerned, the same are pertaining to the rent paid by plaintiff to the trust. However, it must be noted that merely because at one point

of time the entire land i.e. 4 Acres 28 gunthas was in possession of the plaintiff, it cannot be said that the plaintiff has sub-leased some portion out of it to the defendant. If really it would have been so, then the plaintiff would have obtained some agreement to that effect from the defendant and in any event if the name of the defendant was entered in the record then he would have objected to the same. But there is no step taken by the plaintiff to show that the land in question has already been sub-leased by plaintiff to defendant. I think that both the courts below were right in holding that the plaintiff has failed to establish its claim. In this view of the matter there is no substance in this second appeal. The appeal is dismissed with cost.

(S.R.Sathe, J.)